KETUA PENGARAH HASIL DALAM NEGERI

v.

DAYA LEASING SDN BHD

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
AUGUSTINE PAUL JCA
AZMEL MA'AMOR J
[CIVIL APPEAL NO: W01-11-00]
29 JANUARY 2005

REVENUE LAW: *Income tax - Leasing business - Method of calculating gross income*

STATUTORY INTERPRETATION: *Taxing statute - Strict interpretation - Whether power may be implied into provision*

The respondent was engaged in the provision of leasing, factoring and hire purchase financing facilities. There were expenses and interest payments on loans from the respondent's holding company common to both the leasing and non-leasing businesses which required apportionment between the two sources. The respondent was unable to specifically attribute the exact amount of the common expenses to the respective leasing and non-leasing business. The appellant's method to apportion the common expenses included the entire lease rentals, *ie*, both the interest and capital elements. The respondent's formula however ignored the capital element in the lease rentals. The respondent argued that it was only the interest element that had to be taken into account in respect of gross income of the leasing business in line with the manner of ascertaining the gross income of the non-leasing business. The appellant contended that the method used by them was lawful and that the question of it being unfair or inequitable was not a relevant matter for consideration. The Special Commissioners of Income Tax were divided in their opinion and the majority upheld the method adopted by the appellant. The High Court however did not agree with the majority view of the Special Commissioners of Income Tax. The High Court Judge held that the principal should not be taken into account for the apportionment of the common expenses in lease financing as there was no provision in the Income Tax Act 1967 ('the Act') or in the Income Tax Leasing Regulations 1986 ('1986 Regulations') prescribing the manner of doing so in respect of different income sources. The appellant appealed to the Court of Appeal.

Held (allowing the appeal with costs)
Per Augustine Paul JCA delivering the judgment of the court:

[1] In the case of a leasing business the gross income of a person shall be the principal and interest as a separate source for the purpose of ascertaining his adjusted income under s. 33(1) of the Act. Thus the contention of the respondent that the gross income must be confined to the interest element of the leasing business is wholly unsustainable in law. That is clear and ought to have been the end of the matter. (p 462 a-e)

[2] In order to ensure that s. 33(1) of the Act is not rendered otiose the power of the appellant to apportion common expenses must be construed as being implied and therefore an integral part of the section. Such a construction would be consistent with its object and purpose. (pp 462 f-h, 463 a-h & 464 a-b)

[3] The respondent's gross income for the leasing business should constitute the principal and interest elements for the purpose of ascertaining its adjusted income as provided by law. The exclusion of the principal element in the apportionment exercise would be a clear violation of s. 33(1) of the Act to read with reg. 3 of the 1986 Regulations. The common expenses incurred had to be apportioned pursuant to s. 33(1) of the Act. The method of apportionment followed by the appellant was therefore in compliance with the law. It was neither arbitrary nor a matter of discretion. (p 464 c-d)

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden terlibat dalam perniagaan kemudahan-kemudahan pemajakan, pemfaktoran dan pembiayaan sewa beli. Bagi kedua-dua perniagaan pemajakan dan bukan pemajakan responden, terdapat perbelanjaan dan pembayaran faedah atas pinjaman yang diperolehi dari syarikat induk yang memerlukan pengagihan berasingan bagi kedua-dua sumber tersebut. Responden gagal mengagihkan dengan jelas perbelanjaan bersama yang melibatkan perniagaan pemajakan dan perniagaan bukan pemajakan. Apapun, cara responden mengagihkan perbelanjaan bersama adalah meliputi keseluruhan sewaan pajakan, iaitu kedua-dua elemen faedah dan modal. Formula responden bagaimanapun tidak mengendahkan elemen modal dalam sewaan pajakan. Responden berhujah bahawa hanya elemen faedah yang perlu diambil kira berkaitan dengan pendapatan kasar perniagaan pemajakan, selaras dengan cara menentukan pendapatan kasar perniagaan bukan pemajakan. Perayu mengatakan bahawa cara yang mereka gunakan adalah sah dan bahawa soalan sama ada ianya tidak adil atau tidak berekuiti adalah tidak relevan. Pesuruhjaya-Pesuruhjaya Khas Cukai

Pendapatan berbelah bagi dalam pendapat mereka tetapi majoritinya mempertahankan cara yang digunakan perayu. Mahkamah Tinggi bagaimanapun tidak bersetuju dengan pandangan majoriti Pesuruhjaya-Pesuruhjaya Cukai Pendapatan. Hakim Mahkamah Tinggi berpendapat bahawa prinsipal tidak harus diambil kira dalam pengagihan perbelanjaan bersama pembiayaan sewa beli, oleh kerana tiada peruntukan di dalam Akta Cukai Pendapatan 1967 ('Akta tersebut') atau di dalam Peraturan-Peraturan 1986 yang menetapkan cara untuk berbuat demikian berkaitan sumber-sumber pendapatan yang berbeza. Perayu merayu ke Mahkamah Rayuan.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Augustine Paul HMR menyampaikan penghakiman mahkamah:

[1] Dalam kes perniagaan pemajakan, pendapatan kasar seseorang individu adalah prinsipal dan faedah sebagai satu sumber lain bagi maksud pengagihan pendapatan yang diselaraskan di bawah s. 33(1) Akta tersebut. Maka itu, keseluruhan hujah responden bahawa pendapatan kasar harus dikhususkan kepada elemen faedah perniagaan pemajakan tidak dapat dipertahankan di sisi undang-undang.

[2] Untuk mempastikan bahawa s. 33(1) Akta tersebut tidak menjadi sia-sia, kuasa perayu untuk mengagihkan perbelanjaan bersama haruslah ditafsirkan sebagai terzahir dan dengan itu menjadi sebahagian dari seksyen. Pentafsiran yang sedemikian adalah konsisten dengan objek dan tujuannya.

[3] Pendapatan kasar responden untuk perniagaan pemajakan harus menjadi elemen-elemen prinsipal dan faedah bagi maksud penentuan pendapatan yang diselaras sepertimana yang diperuntukkan oleh undang-undang. Penyisihan elemen prinsipal di dalam proses pengagihan jelas menyalahi s. 33(1) Akta tersebut dibaca bersama per. 3 Peraturan-Peraturan 1986. Perbelanjaan bersama yang dibelanja perlu diagih menurut kehendak s. 33(1) Akta tersebut. Cara pengagihan seperti yang diikuti oleh perayu, dengan itu, adalah selaras dengan undang-undang. Ia tidak dibuat secara arbitrari dan bukan merupakan satu perkara budi bicara.

Case(s) referred to:
Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ***(refd)***
Dato' Mohamed Hashim Shamsuddin v. Attorney-General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 SC ***(refd)***
Ostime (Inspector of Taxes) v. Duple Motors Bodies Ltd [1961] All ER 167 ***(refd)***

Legislation referred to:
Income Tax Act 1967, ss. 5(c), 24(5)(a), 33(1), 36(1)(a), (b)
Income Tax Leasing Regulations 1986, regs. 2, 3

Other source(s) referred to:
Justice GP Singh, *Principles of Statutory Interpretation*, 6th edn, p 505

For the appellant - Abu Tariq Jamaluddin (Hazlina Hussain with him); Inland Revenue Board
For the respondent - Tay Hong Huat; M/s Tay & Helen Wong

Reported by Andrew Christopher Simon

JUDGMENT

Augustine Paul JCA:

The issue for determination in this appeal before us is the ascertainment of the correct method of apportioning the common expenses incurred by the respondent (the appellant in the court below) in its leasing and non-leasing business. The Special Commissioners of Income Tax upheld the method adopted by the appellant (the respondent in the court below) in apportioning the common expenses which did not find favour with the High Court.

The facts of the case may be set out as follows. The respondent is principally engaged in the provision of leasing, factoring and hire purchase financing facilities. There are expenses and interest payments on loans from the respondent's holding company common to both the leasing and non-leasing businesses which require apportionment between the two sources. The respondent was unable to specifically attribute the exact amount of the common expenses to the respective leasing and non-leasing business. This led to the dispute between the parties.

The respondent's income from the leasing and non-leasing businesses and common expenses as shown in their accounts for the relevant years are as follows:

	(a)	(b)	(c)	(d)
Year of Assessment	Sum total of lease rentals received and receivable for years of income from operations excluding profit from sale of leased assets	Income from leasing portfolio	Income from leasing non-leasing portfolio	Sum total of the Common Expenses
1987	5,002,252.00	1,323,083.00	833,204.00	732,702.00
1988	5,076,098.00	670,943.00	1,161,972.00	1,084,670.00
1989	2,747,701.00	645,147.00	847,166.00	958,880.00

1990	2,514,209.00	673,681.00	639,467.00	769,299.00
1991	3,074,336.00	780,995.00	487,234.00	811,285.00
1992	4,165,240.00	805,815.00	508,712.00	960,371.00

The table below sets out figures showing the lease rentals comprising the principal and interest elements which together with incidental income make up the gross income from the leasing business and also the gross income from the non-leasing business and the common expenses.

	LEASING PORTFOLIO			NON-LEASING PORTFOLIO	COMMON EXPENSES
	Leasing Rentals				
	Principal +	Interest =	Gross Income	Gross Income*	
	A	B	C	D	
	(RM)	(RM)	(RM)	(RM)	(RM)
1987	3,679,169	1,158,622	5,000,252	833,204	732,702
1988	4,405,155	553,441	5,076,098	1,161,972	1,084,670
1989	2,102,554	619,548	2,747,701	847,166	958,880
1990	1,840,528	637,086	2,514,209	639,467	769,299
1991	2,293,341	753,730	3,074,336	487,234	811,285
1992	3,359,425	777,316	4,165,240	508,712	960,371

* including incidental income

The following figures which appear from the profit and loss accounts of the respondent are the interest element of the rentals receivable for the leasing business in the respective years of assessment:

Year of Assessment	Interest Income (RM)
1987	1,158,622.00
1988	553,441.00
1989	619,548.00
1990	637,086.00
1991	753,730.00
1992	777,316.00

The common expenses and interest attributed to the leasing and non-leasing businesses respectively are derived in accordance with the following formula:

Leasing portfolio

$$L = \frac{X}{X + Y} \times Z$$

Non-leasing portfolio

$$NL = \frac{X}{X + Y} \times Z$$

Where:

L is the apportioned expenses for the leasing business.

NL is the apportioned expenses for the non-leasing business.

X is disputed and forms the subject matter of this appeal. For the Respondent, X represents the figures shown in (b) in the account reproduced earlier. For the Appellant, X represents the figures shown in column (a) of the accounts.

Y represents the figures shown in column (c) of the accounts.

Z represents the figures shown in column (d) of the accounts.

The appellant's method was used to apportion the common expenses for the purpose of determining the adjusted income from the leasing and non-leasing business. The gross income from the leasing business comprised principal plus interest and incidental income while the gross income from the non-leasing portfolio comprised only interest and incidental income. In short, the respondent's formula ignores the capital element in the lease rentals while the appellant's formula includes the entire lease rentals, ie, both the interest and capital elements. The taxes payable by the respondent as assessed for the years of assessment 1987 to 1992 are as follows:

Year of Assessment	Date of Assessment	Form	Tax Assessed Payable (RM)
1987	30.6.1993	JA	96,870.60
1988	30.6.1993	JA	243,415.35
1989	30.6.1993	J	77,158.40
1990	30.6.1993	J	130,202.28
1991	30.6.1993	J	86,330.68
1992	30.6.1993	J	156,014.94

The case for the respondent is that it is only the interest element that must be taken into account in respect of gross income of the leasing business in line with the manner of ascertaining the gross income of the non-leasing business. The argument of the respondent is that the appellant's method will lead to a big proportion of the expenses being attributable to the leasing business. It was argued that this is not in accordance with the scheme of the law since there is no provision for apportioning the common expenses; it is not consistent with the International Accounting Standard 17 which is fair and equitable; and that it is not in line with the accounting practice where only the interest element of the leasing and non-leasing businesses are considered as income. On the other hand the case for the appellant is that the income of leasing business should constitute the principal and interest. The appellant contended that the method used by them is lawful and that the question of it being unfair or unequitable is not a relevant matter for consideration. The Special Commissioners of Income Tax were divided in their opinion and the majority upheld the method adopted by the appellant.

The learned High Court Judge ("the learned judge") who heard the appeal by the respondent considered the majority judgment in detail and we can do no better than reproduce his summary of it. As he said, the Majority of the Special Commissioners first proceeded to examine what they termed general principles regarding the law of taxation. They stated that the provisions of the Income Tax Act 1967 ("the Act") must be strictly applied in the computation of profits or gains of persons chargeable to tax and that the general scheme of the Act is that income tax is chargeable on the income earned in the relevant basis year. They went on to examine s. 5 of the Act which reads as follows:

> 5. Subject to this Act, the chargeable income of a person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner:
>
> (a) first, the basis period for each of his sources for that year shall be ascertained in accordance with Chapter 2 of Part III;
>
> (b) next, his gross income from each source for the basis period for that year shall be ascertained in accordance with Chapter 3 of that Part;
>
> (c) next, his adjusted income from each source (or, in the case of a source consisting of a business, his adjusted income or adjusted loss from the source) for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part;
>
> (d) next, his statutory income from each source of that year shall be ascertained in accordance with Chapter 5 of that Part;
>
> (e) next, his aggregate income for that year and his total income for that year shall be ascertained in accordance with Chapter 6 of that Part; and

(f) next, his chargeable income for that year shall be ascertained in accordance with Chapter 7 of that Part …

Their view was that it was clear from s. 5 of the Act that the adjusted income from a business source (or any other source) is gross income less all allowable deductions permitted by the Act. They next stated that the deduction of expenses from gross income derived from a source is governed by the general provisions of s. 33(1) of the Act which reads as follows:

> 33(1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source, …

They then observed that "in order to arrive at adjusted income one has to deduct from the gross income all outgoings and expenses wholly and exclusively incurred in the production of gross income" and "emphasised" that therefore the gross income is the one that matters. They then made an inference thus, "since s. 33(1) talks about gross income it is only natural that the common expenses must be apportioned between the leasing and the non-leasing portfolios using gross income." They went on to say that to do otherwise would be against the provisions of s. 33(1) of the Act. Turning to the leasing portfolio, they pointed out that "gross income" is clearly defined in reg. 3 of the Income Tax Leasing Regulations 1986 ("the 1986 Regulations") which reads as follows:

> 3. Gross income of a lessor
>
> The total sum of rentals of a lease term receivable in respect of a lease shall be deemed to accrue evenly throughout the period of such lease term and the gross income of the lessor in respect of that lease for the basis period for a year of assessment shall be a portion of the total sum receivable for the lease term, being a portion which bears the same proportion to that total sum receivable as the number of days in the basis period for that year assessment that falls within the lease term bears to the total number of days of the lease term:
>
> Provided that the full rentals receivable in the basis period for a year of assessment may be treated as the gross income of the lessor for the basis period for that year of assessment where the Director General considers such treatment to be just and reasonable in the circumstances.

They were of the view that from this it is clear that the "gross income" of a leasing portfolio comprises of the total rentals which is made up of principal plus interest and that on the other hand the gross income of a non-leasing portfolio is only the interest as provided for under s. 24(5)(a) of the Act which reads as follows:

> (a) The interest shall be treated as gross income of the relevant person from the business for the relevant period if the business is carried on at any time in the relevant period; and …

They were of the view that, therefore, a different interpretation cannot be given for "gross income" when the law clearly provides what is gross income for leasing activities and that to do otherwise would be to violate the law. They concluded that the respondent's method therefore has a legal basis ie, since s. 33(1) of the Act talks about "gross income". They noted that the 1986 Regulations were introduced later (the Act came into force in 1967). They were of the view that the legislators must have had a basis for distinguishing the income of leasing activities from the income of non-leasing activities. They observed that but for reg. 3 of the 1986 Regulations, only the interest element would have constituted the gross income of leasing business and in that respect, when capital allowance is given on the asset leased, it would appear that the cost of the asset would be allowed twice. They were of the view that reg. 3 of the 1986 Regulations was drafted with the objective of rectifying this situation. They rejected the method of calculation used by the appellant on the ground it has no legal basis and that it was advanced merely to serve the benefit of the appellant and in view of what Lord Guest stated in *Ostime (Inspector of Taxes) v. Duple Motors Bodies Ltd* [1961] All ER 167 that the taxpayer cannot decide on what principle his income is to be assessed, the appellant's method cannot be applicable.

The learned judge did not agree with the majority view of the Special Commissioners of Income Tax. He first referred to s. 36 of the Act which reads as follows:

> 36. Power to direct special treatment in the computation of business income in certain cases
>
> (1) Notwithstanding any other provision of this Part, where the Director-General is satisfied that there is a need for some special treatment in computing:
>
> (a) the gross income from a business with respect to:
>
> (i) a hire-purchase transaction;
>
> (ii) a transaction under which a debt is payable by installments;

(iii) a lease transaction in respect of moveable property; or

(iv) any other transaction involving a debt or stock in trade; and

(b) the adjusted income from the business,

he may give directions and formulate regulations to be published in the Gazette for special treatment with respect to any such transaction, either in relation to a particular business or in relation to any business having any such transaction;

Provided that no such directions and regulations shall have effect in relation to a business for any year of assessment with respect to which an assessment wholly or partly relating to income from that business has become final and conclusive or is the subject of an appeal which has been sent forward to the Special Commissioners.

(2) Any direction given under subsection (1) with respect to the gross income and adjusted income from a business or businesses may:

(a) provide that the gross income to which it relates (or any part thereof) shall be taken to be gross income for such basis period or periods for such year or years of assessment with respect to that business or those businesses as may be specified in the direction;

(b) provide for special treatment with respect to the ascertainment of the adjusted income from that business or those businesses for the basis period or periods for any year or years of assessment.

In commenting on the directions given by the appellant under s. 36 of the Act and the consequences thereof the learned judge said:

Section 36, it will be observed, makes clear reference to special treatment in computing both 'the gross income … and the adjusted income' because it is expected that any special treatment in computing the gross income has, perforce, to provide for some special treatment in computing the adjusted income as well. In fact, it was pointed out by the Minority View that subsection (2)(b) specifically empowers the Respondent to provide for special treatment with respect to the ascertainment of the adjusted income, envisaging the necessity for such special treatment to complement any special treatment in computing the corresponding gross income. However, the 1986 Regulations, while requiring the gross income from leasing transactions to be treated as being derived from a separate business source, did not at the same time also provide for corresponding special treatment in ascertaining the adjusted income, particularly the manner of apportioning common expenses to the leasing activity now that it is deemed a separate business source.

Thus there is neither a provision in the Act nor one in the 1986 Regulations (and it has not been shown there is a provision in other Regulations) prescribing the manner for the apportionment of common expenses in respect of different income sources. Quite clearly therefore there is no legal basis for the Respondent to use his method to apportion the common expenses in this case.

The Majority View had relied, as pointed out, on Ostime (Inspector of Taxes) to say that the taxpayer cannot decide on what principle his income is to be assessed and therefore the Appellant's method of calculation should be rejected. But I think what was missed is that any assessment must be done in accordance with the provisions of the Income Tax Act whether the assessment is by the Taxpayer or by Inland Revenue. That was what Lord Guest said:

> It can never rest with the taxpayer to decide on what principle his income is to be assessed for tax purposes. The directors' decision can never be decisive of the matter for income tax purposes. **The assessment in addition to being consistent with normal accounting practice must be made in accordance with the provisions of the Income Tax Act.** (emphasis added)

Having said that I must add that quite clearly and obviously that the Appellant's formula must also be rejected for it not having been made in accordance with the provisions of the Income Tax.

The words of Rowlatt J on *Cape Brandy Syndicate v. IRC* 12 TC 358 at 366:

> Now of course it is said and urged by Sir William Finlay that in a taxing Act clear words are necessary to tax the subject. But it is often endeavoured to give to that maxim a wide and fanciful construction. It does not mean that the words are to be unduly restricted against the Crown or that there is to be any discrimination against the Crown in such Acts. It means this, I think: *it means that in taxation you have to look simply at what is clearly said. There is no room for any intendment, there is no equity about a tax: there is no presumption as to a tax; you imply nothing, but you look fairly at what is said and what is said clearly and that is the tax.* (emphasis added)

The conclusion is clear. There is nothing in the Act or the Regulations made thereunder to authorise the use of the Respondent's formula in ascertaining the adjusted income from each of the Appellant's sources of income. The relevant tax assessments for the years 1987 to 1992 are erroneous to the extent that the formula of the Respondent was used to determine the Appellant's adjusted income.

As was stated earlier the Appellant's formula cannot also be resorted to.

What then should be done in the absence of a prescribed procedure? The Minority View merits consideration. The view is that in the absence of any statutory procedure, the just and reasonable solution is to rely on the accepted principle that revenue expenditure is deductible only against income revenue. Since there should not be allowed any deduction of expenses against the element of principal of the lease rentals, which is capital in nature, it follows that no portion of the deductible common expenses could have been expended in the production of that part of the gross income represented by the element of principal. Thus the element of principal should not be taken into account for the purpose of apportioning the 'non-capital' common expenses, which should be apportioned between the Appellant's two business portfolios according to the ratio between only the 'non-capital' income from each of the two portfolios.

In allowing the appeal the learned judge said:

Although there is no statutory provision for the method of apportioning the common expenses between two or more sources of gross income, the formula advanced by the Minority View is not at cross purposes with provisions of the Act. A tax has to be collected and although there is no express provision how it should be calculated, one has to go back to first principles. The formula rests on an accepted principle that revenue expenditure is deductible against income revenue. It is also a just and reasonable solution to a problem which has not been addressed by the Respondent under powers which he has under s. 36 of the Act. In contrast it has not been shown that either the Respondent's or the Appellant's formula is in accordance with accepted principles of taxation.

The functions and powers of the Court with regard to tax appeal cases was laid out in the case of *Lower Perak Co-operative Housing Society v. KPHDN* [1994] CLJ where the Court adopted the principles in the case of *Edwards v. Bairstow & Harrison* [1956] AC 14:

> If the case contains anything *ex facie* which is bad in law and which bears upon the determination, it is, obviously, erroneous in port of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination has been error in point of law. I do not think it matters whether this state of affairs is described as one in which there is no evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination.

I am satisfied the Majority View on the matter is erroneous on a point of law.

> I allow the appeal. The assessments made by the Respondent for the years of assessment 1987 to 1992 are amended so that the formula for the apportionment of the common expenses for lease financing shall not take into account the element of principal and that what should be apportioned between lease financing portfolio and non-leasing portfolio shall be in accordance with the ratio between only the non-capital income from each of the two portfolios. Half costs to the Appellant.

The learned judge has taken the view that under section 36 of the Act "… it is expected that any special treatment in computing the gross income has, perforce, to provide for some special treatment in computing the adjusted income as well." It must be observed that s. 36(1) of the Act clearly enunciates that the Director General may provide for special treatment in computing gross income and adjusted income only if he "… is satisfied that there is a need for …" doing so. It is a matter for him to decide. Under s. 36(1)(a) and (b) of the Act he may provide for such special treatment in the case of gross income or adjusted income or both. We say this because the semi-colon followed by the conjunction "and" between s. 36(1)(a) and (b) means that both the provisions must be construed disjunctively. In so saying we derive support from the judgment of the (then) Supreme Court in *Dato' Mohamed Hashim Shamsuddin v. Attorney-General, Hong Kong* [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 where Abdoolcader SCJ said, even in the case of comma followed by the conjunction "and":

> Its punctuation forms part of any statutory enactment and may be used as a guide to interpretation. The day is long past when the Courts would pay no heed to punctuation in any written law (*Hanlon v. Law Society* [1981] AC 124) (at pages 197 – 198 per Lord Lowry), and the presence or absence of a comma may be highly significant, (Re Steel (deceased), *Public Trustee v. Christian Aid Society* [1979] Ch 218; *Marshall v. Cottingham* [1981] 3 All ER 8 (at page 12)). Section 16(1) of the 1964 Act must in my view be read disjunctively in the light of the comma I have referred to which is significantly followed by the conjunction 'and'.

It follows that there is nothing unusual or unlawful in the Director General having provided for special treatment in the computation of gross income for leasing businesses without having made corresponding provisions for the computation of adjusted income. It only means that he is not satisfied that there is a need to do so.

The critical matter for consideration is the finding of the learned trial judge that the element of principal should not be taken into account for the apportionment of the common expenses in lease financing as there is no provision in the Act or in the 1986 Regulations prescribing the manner of doing so in respect of different income sources.

The starting point in determining the correctness of the finding of the learned judge is the manner of ascertaining the chargeable income of a person upon which tax is payable. This is governed by s. 5 of the Act which provides, *inter alia*, that a person's gross income from each source shall be ascertained in accordance with Chapter 3 of Part III of the Act followed by an ascertainment of his adjusted income in accordance with Chapter 4 of that Part the relevant provision of which is s. 33(1) of the Act. This section stipulates that the allowable expenses of a person for a source shall be deducted from the gross income of that source. It must be observed that the opening words of the section, that is to say, "Subject to this Act …" mean that the section must be modified, where necessary, in the light of other provisions in the Act or other laws made under the authority of the Act. The 1986 Regulations is such a law under the latter category. Regulation 2 of the 1986 Regulations provides that the gross income of a person from lease transactions shall be deemed to be a separate and distinct business source from other activities of that person. Regulation 3 of the 1986 Regulations provides that in the case of a leasing business the gross income shall be the total rental received for the basis period for a year of assessment. The total rental would comprise the principal and interest. It follows that the meaning of "gross income" in s. 33(1) of the Act must be construed in the light of regs. 2 and 3 of the 1986 Regulations. The result is that in the case of a leasing business the gross income of a person shall be the principal and interest as a separate source for the purpose of ascertaining his adjusted income under s. 33(1) of the Act. Thus the contention of the respondent that the gross income must be confined to the interest element of the leasing business is wholly unsustainable in law. That is clear and ought to have been the end of the matter.

What, perhaps, has created some confusion is whether s. 33(1) of the Act which prescribes the method of ascertaining "… the adjusted income of a person from a source … shall be an amount ascertained by deducting from the gross income of that person from that source …" authorises the apportionment of common expenses where there are two or more sources of income. It is clear that s. 33(1) of the Act is applicable even where there are two or more sources of income. This flows clearly from s. 5(c) of the Act which provides that the "… adjusted income from each source … for the basis period for that year shall be ascertained in accordance with Chapter 4 of that part." The word "each" in the phrase referred to contemplates the existence of more than one source of income. Therefore s. 33(1) of the Act which must be read with s. 5(c) of the Act is applicable even in cases where a person has more than one source of income. It must, however, be remembered that if a person has two or more sources of income then his adjusted income must, as provided by s. 33(1) of the Act, be ascertained separately source by source. This is necessary as the expenses allowed for one source can only be those

incurred in respect of the gross income of that source. Where there are two or more sources of income for a person and the expenses are identifiable and separable there will be no difficulty in ascertaining the adjusted income for each source. However, there will be instances when the expenses of two or more sources are not separable as they are common to the sources. As s. 33(1) of the Act requires a deduction of the expenses of a source from the gross income of that source for the purpose of ascertaining the adjusted income of the sources the question that arises for determination is whether the section empowers the appellant to apportion the expenses. The power to apportion the expenses can be implied in s. 33(1) of the Act in view of the need to ascertain the adjusted income. But taxing statutes are subject to a strict rule of construction. As Rowlatt J said in *Cape Brandy Syndicate v. IRC* [1921] 1 KB 64 at p. 71:

> It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

If s. 33(1) of the Act is to be strictly construed the appellant will be unable to identify the expenses separately where they are mixed with the result that the adjusted income of the sources cannot be ascertained. This will defeat the object of s. 33(1) of the Act and bring the machinery of tax assessment to a grinding halt. This will not happen in the interpretation of ordinary statutes as one of the salutary canons of construction in such cases is that Parliament does not act in vain. The courts strongly lean against a construction which reduces a statute to a futility. A statute must be so construed so as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pareat (that the thing may rather have effect than be destroyed in order that the thing may be valid rather than invalid). A matter of concern is whether this rule of construction can be resorted to in construing s. 33(1) of the Act as taxing statutes must be strictly construed. Since the section deals with the machinery of tax assessment and is for the benefit of the taxpayer by providing for the ascertainment of the adjusted income it is not subjected to a strict construction like ordinary taxing statutes. In this regard reference is made to *Principles of Statutory Interpretation* by Justice GP Singh 6th edn, p 505:

> It must also be borne in mind that the rule of strict construction in the sense explained above applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection, and such machinery provisions have to be construed by the ordinary rule of construction (*Gursahai v. CIT* AIR [1963] SC 1062). One important consideration in construing a

machinery section is that it should be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable – *ut res magis valeat quam peveat* (*NB Sanjana v. Elphinston Spinning & Weaving Mills* AIR [1971] SC 2039). Similarly a machinery provision which enables the assessee to avail of a concession or benefit conferred by a substantive provision in the Act is liberally construed (*CIT v. Kulu Valley Transport Co Pvt Ltd* AIR [1970] SC 1734).

Thus in order to ensure that s. 33(1) of the Act is not rendered otiose the power of the appellant to apportion common expenses must be construed as being implied and therefore an integral part of the section; a construction that will be consistent with its object and purpose.

It is therefore clear that the respondent's gross income for the leasing business shall constitute the principal and interest elements for the purpose of ascertaining its adjusted income as provided by law. The exclusion of the principal element in the apportionment exercise in this case will be a clear violation of s. 33(1) of the Act read with reg. 3 of the 1986 Regulations. The common expenses incurred must be apportioned pursuant to s. 33(1) of the Act. The method of apportionment followed by the appellant is therefore in compliance with the law. It is neither arbitrary nor a matter of discretion. In the upshot we allow the appeal with costs here and below.